



U.S. Citizenship
and Immigration
Services

FILE:

Office: VERMONT SERVICE CENTER

Date:

NOV 01 2004

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4); as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The director reopened the petition following an untimely appeal, and again denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a "church custodian" (the petitioner has subsequently used various other titles as well). The director initially determined that the petitioner had not established (1) its status as a tax-exempt religious organization; (2) that the beneficiary's position qualifies as a religious occupation; (3) that the beneficiary had the requisite two years of continuous work experience in a religious occupation immediately preceding the filing date of the petition; or (4) the petitioner's ability to pay the beneficiary's proffered wage.

The director initially denied the petition on June 19, 2002. The petitioner filed an untimely appeal on August 29, 2002, which the director treated as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The petitioner's initial appeal (which the director treated as a motion) resolved the issue of the petitioner's tax-exempt status, but the director determined that the petitioner had not overcome the remaining grounds for denial.

On appeal, the petitioner submits additional letters and documentation regarding the petitioner's finances and the beneficiary's activities.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or

religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples, above. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The second basis for the denial is tied to the above issue. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The experience issue is tied to the religious occupation issue, because the director did not contest the beneficiary's experience in the position. Rather, the director concluded that the beneficiary's work is not a qualifying religious occupation, and therefore his past experience in that occupation is not qualifying experience. Thus, by resolving the religious occupation question, the experience issue effectively evaporates.

Peter J. Foxx, pastor of the petitioning church, lists the beneficiary's "ministries":

- home Bible Study – outreach ministry
- counseling with both adults and young people
- summer camp youth counselor
- soccer programs for youth
- visitation of sick both at home and in hospitals
- community outreach ministries . . . big brother program

George Bailey, treasurer of Bible Missionaries Fellowship, states that the beneficiary "has engaged in counseling of young people in schools, correctional centers, and through the local Franklin County Children's Services. He has served as a mentor for several young people through the Franklin County Children's Services. In addition he has been active with young people in coaching track and field and soccer." Pastor Foxx asserts that the beneficiary "served as a coach with the U.S.A. Special Olympics." Athletic coaching is not self-evidently religious in nature, and documents regarding the beneficiary's athletic endeavors, such as the Columbus Crew soccer program, make no mention of religion. The Special Olympics are a secular event rather than a traditional religious function. Regarding the beneficiary's claimed counseling at schools and

correctional centers, the record contains nothing from the institutions to describe the nature or extent of the beneficiary's work there.

[REDACTED] Sr., director for [REDACTED] Services' Simba program, indicates that the beneficiary has "mentored 3 . . . children at our agency" between 1998 and 2002, "while being an advocate for youth soccer in our community. [REDACTED] does not mention the church or religion in his letter, or establish that these activities relate to traditional religious functions. While admirable, the beneficiary's mentoring and coaching work amount to secular volunteer work, rather than qualifying experience in a religious occupation or vocation. Such secular, volunteer community work is neither qualifying nor disqualifying; it is simply irrelevant to the issue at hand.

The letters and materials submitted prior to the denial of the petition establish that the beneficiary was active both in his church and in his community, but they do not show that the beneficiary was continuously engaged in a qualifying religious occupation or vocation throughout the two-year qualifying period, or that the beneficiary would undertake qualifying religious work in the future.

On appeal from the initial denial, Pastor Foxx offers a more detailed description of the beneficiary's work:

[The beneficiary] is the key person in our efforts to begin a new church in the inner city of Columbus. Currently, he is conducting weekly Bible classes with the purpose of gathering a core group that will serve as the foundation for the new work. In July he supervised a Daily Vacation Bible School among neighborhood children that also will work toward the beginnings of a Sunday School in the future.

[The beneficiary] is also highly valuable as a pulpit supply minister. [The petitioner] is often asked to supply pulpits with preachers. He has preached at Faith Bible Church in Bellevue and Powell Bible Church in very recent days.

[The beneficiary] also assists the pastoral staff of [the petitioning church] in hospital visitation. He is a competent counselor for those who are physically ill. In the summers he serves as a counselor at Camp Peniel, a Christian day camp for children in Central Ohio.

The beneficiary himself offers this description:

My duties as a "religious worker" are: (1) to preach the gospel to the lost, to edify the saints through the teaching of God's Word, to "earnestly contend for the faith which was once delivered to the saints" (Jude 1:3), and to cooperate with churches, Christian schools, campsites, and Christian activities functioning in harmony with God's holy Word. (2) To establish and maintain Christian ministries and churches, youth camps, school and conference grounds to promote the spiritual, physical, and social well-being of all who participate therein. (3) To assist fundamental Bible believing churches in their efforts to preach the gospel and edify the saints.

The director reopened and again denied the petition, stating that the petitioner had not established that the beneficiary's past or proposed future duties constitute a qualifying religious occupation. On appeal from this decision, Pastor Foxx states:

[The beneficiary] serves our congregation well as a counselor to those experiencing times of emotional distress and an encourager to those physically ill in hospitals or nursing homes. At these times he reads the Scriptures to the parishioners, listens to their concerns and has a word of prayer with them.

[The beneficiary] is also a preacher of the Word of God. He teaches the Scriptures at various Sunday School classes in the church, youth group meetings, vacation Bible School classes, or Christian School functions. [The beneficiary] is also in demand as a pulpit supply preacher. It is not uncommon for other churches to contact [us] requesting our church to assist them in supplying one of our ministers to fill their pulpit for a Sunday service.

[The beneficiary] is extremely valuable to our ministry as an outreach evangelist. It is the desire of our church to begin a new church ministry in the inner city. [The beneficiary] has initiated the beginnings of this new ministry with a Bible class in a downtown area of our city. He teaches a Bible class there on a weekly basis.

The petitioner has submitted fragmentary but nevertheless consistent evidence showing the beneficiary's activities on behalf of the church, extending well before the two-year qualifying period.

The director denied the petition, stating that the petitioner has not shown that the beneficiary's position requires specific religious training. While the "religious training" argument has been heavily used in decisions of this kind, review of regulations and policy (encouraged, in part, by court rulings) has called into question the "religious training" standard. More relevant, it appears, is the question of whether or not a given religious denomination traditionally relies on paid employees or volunteers from the congregation to perform a particular task. (Obviously, the regulation still holds when it comes to excluding secular employment such as janitorial or administrative staff.) The petitioner has indicated that the beneficiary has drawn a regular salary for his work, in contrast to instances where the alien worker is an unpaid volunteer, receives only a minimal stipend, or abruptly begins receiving a salary only after the director asks for evidence thereof.

Even then, the record contains a copy of the beneficiary's diploma from the Bible Institute of Ohio, thus establishing that the beneficiary does possess "religious training" beyond the exposure typically afforded by regular church attendance. The director acknowledged this diploma, but found that the record contained no evidence "of the time . . . required to obtain that diploma." The diploma itself, however, states that the beneficiary completed a "3 year Course of Study."

Upon consideration, the beneficiary's main duties appear to be consistent with those of a religious counselor and religious instructor, both qualifying occupations listed in the regulations. The director's principal objection, that the beneficiary lacks significant training, is both legally questionable and refuted by the evidence of record.

The final issue raised by the director concerns the petitioner's offer to pay the beneficiary \$14,500 per year. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability

shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner's initial submission contained no financial documentation. The director requested such materials and other evidence on November 19, 2001, but the petitioner's response to the director's request included nothing to establish the petitioner's ability to pay the beneficiary's salary. The director, in denying the petition, observed that the petitioner "did not appear to address the issue."

The petitioner's first appeal includes balance sheets and other documents of unclear origin. The director^{*} acknowledged this evidence, but again denied the petition, stating that there is no evidence that these documents were prepared or reviewed by an accountant (despite the fact that several pages are signed by a certified public accountant).

On appeal, the petitioner submits more complete copies of some of the documents provided earlier. The new submission provides valuable context, showing that the previously-submitted documents are portions of what amount to the church's annual reports, which are acceptable evidence under 8 C.F.R. § 204.5(g)(2). These reports indicate that the beneficiary has been paid in excess of the proffered wage since 2001, making it difficult to conclude that the petitioner was not able to pay that wage.

While the record does not present the most complete possible picture of the beneficiary's work and the petitioner's finances, the materials presented are sufficient to establish a preponderance of evidence. There are, at this time, no inconsistencies or other grounds to question the credibility or authenticity of the evidence.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.